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SUBJECT: CORREA PROMOTES LOCAL PHARMACEUTICAL PRODUCTION

¶1. SENSITIVE BUT UNCLASSIFIED

¶2. (SBU) Summary. The head of Ecuador's Intellectual Property Institute (IEPI) denies the GoE intends to annul all pharmaceutical patents, as public statements by President Correa on September 26 suggested. However, the government is undertaking a review of pharmaceutical patents to consider issuance of compulsory licenses. According to IEPI, the GoE plans to follow the legal process established in the WTO Trade Related Intellectual Property Rights Agreement (TRIPS) and Ecuador's national Intellectual Property Law. U.S. NGO Essential Action is providing legal advice to the GoE regarding compulsory licensing. Separately, the GoE is instituting a two-tier system for government tenders for medicines, relegating foreign suppliers to the second tier. End Summary.

¶3. (SBU) On October 1 and 8, Embassy staff met with local representatives of U.S. pharmaceutical companies Pfizer, Merck Sharp and Dohme, Schering-Plough, and Wyeth to discuss statements made by President Correa during his weekly address on September 26. During his address, Correa announced plans to establish a public tender system for medicines that prioritizes local production, and to eliminate pharmaceutical patents.

¶4. (U) Under the new public tender process, only national pharmaceutical suppliers will be able to participate in an initial bidding round. Should the government be unable to fulfill all of its requirements through the initial bid, a second round will be held in which foreign suppliers will be able to participate. This new system will be a significant blow to U.S. pharmaceutical companies, for whom sales to the public sector account for a significant portion of domestic sector sales, in some cases counting for close to 20 percent of local sales. In announcing the change, President Correa said he was responding to requests for support from local industry, which he said currently supplies only 22 % in volume and 13% in value of medicines sold in the domestic market. Note, Ecuador is not a signatory to the WTO Agreement on Government Procurement.

¶5. (SBU) Also troubling was President Correa's statement that he planned to eliminate all "obligatory patents" within a week. Correa said Ecuadorian law and international treaties allow Ecuador to repeal patents for human health concerns, adding that all medicines that can be produced and copied in Ecuador should be domestically produced. These statements were consistent with a vision Correa espoused in July: "Intellectual property is a mechanism for development for the people. This is our vision of

intellectual property. It is not a mechanism to enrich the pharmaceutical or agrochemical companies."

¶6. (SBU) In an October 7 meeting, the president of Ecuador's Intellectual Property Rights Institute, Andres Ycaza, sought to reassure SCO and ECONOFF that the GoE was not planning to annul all pharmaceutical patents. Ycaza said he had been surprised by Correa's statements as well, having received notice of them while attending a World Intellectual Property Organization meeting in Geneva. However, Ycaza said the GoE was conducting a review of all pharmaceutical patents and does plan to issue compulsory licenses to address problems of access to medicine, specifically referring to cancer and HIV/AIDS treatments. In response to points raised by SCO and Econoff that compulsory licensing typically is used for emergency situations, permitted for only a specific time period and pursued only after negotiations with patent holders, Ycaza emphasized the GoE's intent to conduct the process in a manner consistent with Ecuador's legal obligations under the WTO TRIPS Agreement and Ecuador's Intellectual Property Law. He also mentioned that Ecuador would be justified in issuing compulsory licenses due to reasons of "public interest." Ycaza noted the need to provide access to medicines that are prohibitively expensive, mentioning a cancer drug that costs \$6,000 per injection as an example.

¶7. (SBU) While departing IEPI's offices, Embassy staff met Peter Maybarduk, a representative of U.S. NGO Essential Action, who is providing legal counsel to IEPI on compulsory licensing as part of the NGO's Access to Medicines program. For its part, U.S. industry is trying, through well placed contacts, to get a better idea of President Correa's core objectives. Once it is clearer whether the President's interests principally relate to access to medicine or promotion of domestic industry, the companies intend to try to develop a positive agenda they can present to the President as a way of opening the door to a more collaborative relationship. Embassy plans to consult with the Missions of other international pharmaceutical companies (French, British, Swiss, German, Swedish) and to continue seeking better definition of GoE intentions through meetings at the Coordination Ministry for Production and the Ministry of Health. At this point, Embassy interaction with the GoE on the issue remains one of seeking information.

¶8. (SBU) Comment. Ycaza's focus on IPR is relatively narrow. Although he may believe the GoE's plans are motivated purely by an interest in providing better access to medicine, compulsory licensing coupled with the government's new discriminatory public tender process, President Correa's close personal relationship to certain local pharmaceutical producers and his rhetoric suggest that Correa's more fundamental agenda is promotion of the domestic pharmaceutical industry. This would be consistent with the emphasis Correa has been placing on national production across industry lines (petroleum sector as an example) in the name of Ecuadorian sovereignty.

HODGES